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STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

IN THE ELKHART SUPERIOR COURT 2

CAUSE No. 20D02-1106-PL-00037

LEO VANNORMAN, et al.,)

Plaintiffs,)

v.)

FLEXSTEEL INDUSTRIES, INC.,)
LDL REALTY COMPANY, LLC,)
HERITAGE FINANCIAL GROUP, INC.,)
DAVID L. DYGERT, and)
PHYLLIS B. DYGERT,)

Defendants.)

FLEXSTEEL INDUSTRIES, INC.,)

Third-Party Plaintiff,)

v.)

TRAVELERS PROPERTY CASUALTY)
COMPANY OF AMERICA, NATIONAL)
UNION FIRE INSURANCE COMPANY)
OF PITTSBURGH, PA, ILLINOIS)
NATIONAL INSURANCE COMPANY,)
and CONTINENTAL CASUALTY)
COMPANY,)

Third-Party Defendants.)

FILED IN
OPEN COURT

JUN 22 2011

CLERK ELKHART
SUPERIOR COURT #2

**PLAINTIFFS' MOTION FOR ALTERATION OF TIME TO
RESPOND TO FLEXSTEELS' MOTION FOR SUMMARY JUDGMENT**

Pursuant to Indiana Trial Rules 56(F) and 56(I), Plaintiffs, by counsel, respectfully
request that the Court alter the time in which the Plaintiffs are required to serve a

response to the Motion for Summary Judgment filed by Defendant Flexsteel Industries, Inc. ("Flexsteel") on June 13th, 2011 ("Motion").

Unless the Court is inclined to deny Flexsteel's Motion outright – which would be justified as explained below – Plaintiffs will reasonably require an opportunity to conduct discovery in order to respond to Flexsteel's Motion.

This case has just begun. Flexsteel has not even fully responded to Plaintiffs' initial set of discovery requests, and as the case develops, follow-up discovery will be required. (See Affidavit of Thomas A. Barnard, attached hereto as Exhibit H) Flexsteel's motion is the type expected at the *end* of discovery, after all parties have had ample opportunity to discover relevant facts. Trial Rules 56(F) and 56(I) exist for situations like the present, when the standard thirty (30) day response time would work an injustice on the responding party.

Moreover, this is a complicated case involving liability for environmental contamination that has been found in subsurface soils and groundwater. The contamination most at issue, caused by the presence of trichloroethylene ("TCE") and tetrachloroethylene ("PCE"), could have been created through releases of relatively small quantities of adhesives, degreasers or other products containing these harmful chemicals. In fact, just five drops of TCE is enough to contaminate an Olympic size swimming pool above federally set drinking water standards.

Finally, Flexsteel's liability under Plaintiffs' legal theories is not pinned just to Flexsteel's use of TCE and/or PCE. Flexsteel also could be liable for environmental harms caused by defendant Dygert (who built the facilities and operated there for nearly fourteen years prior to selling the land and assets to Flexsteel in 1997), under theories

of successor liability (e.g., *de facto* merger, and/or mere continuation theories) and under common law nuisance ("adopting" or maintaining a nuisance, even though the nuisance was originally created by Dygert), and for "contributing" to the releases under the Environmental Legal Action statute through its actions and inactions, coupled with knowledge of prior chemical usage. Each of these theories is fact-dependant, and Plaintiffs will require an opportunity to discover the pertinent facts.

Flexsteel's Brief in Support of Defendant Flexsteel's Motion for Summary Judgment ("Brief") is strident in tone. Plaintiffs will not respond with adjectives or invective, rather, Plaintiffs would simply show the Court at this point the following facts:

- Plaintiffs reasonably believe that the contamination at issue has emanated from the Flexsteel Site: in 2008 an investigator for the United States Environmental Protection Agency wrote that "[t]he states' Geologist said that he is certain that the tce contamination is coming from the direction of a company that used to occupy 2503 Marina called Dygert Seating." ¹
- Flexsteel has used TCE and PCE in its manufacturing operations in Elkhart, as shown by its own documents and interrogatory responses.² In fact, in support of its own summary judgment motion, Flexsteel designated its own sworn interrogatory answers admitting that Flexsteel used an aerosol degreaser that contained TCE to clean its cutters.³

¹ Exhibit A – July 31, 2008 Kenneth Theisen email, as discussed in more detail below.

² Exhibit B – FE 8 at Int. Nos. 25 and 26 in Flexsteel's Designation of Evidence, and Exhibit C – MSDS Bender's Wholesale Dist. Inc. as discussed in more detail below.

³ Id. Exhibit B at Int. No. 25.

⁴Exhibit D – Responses of Defendant, Heritage Financial Group, Inc. and LDL Realty Company, LLC to Plaintiffs' Request for Production at Request Nos. 14 and 18.

- A document just produced by Defendants LDL Realty and Heritage Financial references "buried barrels of adhesives," raising numerous questions that require discovery.⁴

These facts, as well as others described below, will require additional discovery so that the Plaintiffs can present the Court with a complete record of Flexsteel's chemical usage, Dygert's chemical usage, knowledge of both defendants as to releases, and facts related to successor and ELA legal theories.

To require the Plaintiffs to respond to Flexsteel's Motion without the benefit of depositions and additional discovery would result in manifest injustice to the Plaintiffs. The Court has broad discretion to alter the time frames under Trial Rule 56 and, under the present circumstances, justice and efficiency are best served by holding Flexsteel's Motion in abeyance pending the completion of discovery.

ARGUMENT

A. Flexsteel Has Failed To Even Carry Its Initial Burden Under Trial Rule 56.

As the moving party, Flexsteel bears the initial burden of establishing no genuine issues of material fact and the appropriateness of judgment as a matter of law. "If the movant fails to make this prima facie showing, then summary judgment is precluded regardless of whether the non-movant designates facts and evidence in response to movant's motion." *Monroe Guaranty Ins. Co. v. Magwerks Corp.*, 829 N.E.2d 968, 975 (Ind. 2005). In *Magwerks*, Magwerks moved for summary judgment but its own designated materials created – not eliminated – a genuine issue of material fact. *Id.* at 974-75. Accordingly, the Supreme Court determined that even if the opposing party

(Monroe Guaranty) had designated no materials in opposition to Magwerks' motion, the trial court should have denied Magwerks' motion:

In this case, even if Monroe Guaranty's designated materials were excluded from consideration, Magwerk's failure to carry its initial burden of showing that the structural integrity to its building or any part thereof suffered substantial impairment is fatal to Magwerk's coverage claim. We therefore summarily affirm the opinion of the Court of Appeals reversing the trial court's grant of summary judgment in Magwerk's favor.

Id. at 975.

Here, the Court would be on solid ground in denying Flexsteel's Motion, even without a response from Plaintiffs, because Flexsteel's own designated materials establish that Flexsteel used products containing TCE and PCE at its Elkhart facility.⁵ Under the authority of *Magwerks*, Flexsteel's own filing has failed to eliminate a genuine issue of material fact as to whether Flexsteel is liable for trespass, nuisance and for "causing or contributing" to a release of these chemicals under the Indiana Environmental Liability Act, Ind. Code § 13-30-9-2, and therefore summary judgment in favor of Flexsteel is precluded.

If, however, the Court does not agree on this point, Plaintiffs do not wish to risk their entire case on a summary judgment ruling at this opening stage of the litigation without the opportunity to undertake and complete its discovery in order to fully respond (if indeed a response is required) to Flexsteel's motion.

B. Summary judgment is inappropriate when discovery issues are outstanding.

As recently stated by the Indiana Supreme Court, "as a general proposition it is improper for a court to grant summary judgment while reasonable discovery requests that bear on issues material to the motion are still pending." Kroger Co. v. Plonski, 930

⁵ Exhibit B – FE 8 at Int. Nos. 25 and 26 in Flexsteel's Designation of Evidence.

N.E.2d 1, 6 (Ind. 2010); Boggs v. Tri-State Radiology, Inc., 730 N.E.2d 692, 698 (Ind. 2000); Geico Ins. Co. v. Rowell, 705 N.E.2d 476, 480 (Ind. Ct. App. 1999); Venture Enterprises, Inc. v. Ardsley Distributors, Inc., 669 N.E.2d 1029, 1032 (Ind. Ct. App. 1996); Seufert v. RWB Medical Income Properties I Limited Partnership, 649 N.E.2d 1070, 1073 (Ind. Ct. App. 1995); Ludwig v. Ford Motor Co., 510 N.E.2d 691, 700 (Ind. Ct. App. 1987); Roark v. City of New Albany, 466 N.E.2d 62, 66 (Ind. Ct. App. 1984). The only exception is where the "pending discovery is unlikely to develop a genuine issue of material fact." American Management, Inc. v. Riverside Nat'l Bank, 725 N.E.2d 930, 933 (Ind. Ct. App. 2000).

In GEICO, the non-moving party (Rowell) filed a motion for extension of time of ninety (90) days to respond to GEICO's motion for summary judgment in order to take "2-3 depositions and obtain additional or supplemental affidavits from individuals outside of counsel's immediate control." 705 N.E.2d at 479. The trial court granted the extension, and two subsequent extensions in order to allow Rowell to take a deposition. On appeal, Chief Judge Baker rejected GEICO's argument that the trial court erred in allowing Rowell's extensions of time, finding that Trial Rule 56 (F) and 56(I) allows such extensions of time to respond to summary judgment motions, and that the trial court did not abuse its discretion in affording Rowell the requested time to complete discovery. Id. at 480.

In the instant case, Flexsteel seeks summary judgment on Plaintiffs' claims of trespass, nuisance and the Indiana Environmental Liability Act, Ind. Code § 13-30-9-2 ("ELA"). Flexsteel boldly asserts that "Flexsteel is entitled to summary judgment on Plaintiffs' frivolous claims because Plaintiffs' unsupported and false theories of chemical

usage and disposal have no basis in fact." (Brief in Support of Defendant Flexsteel's Motion for Summary Judgment ("Brief"), at 1). Plaintiffs respectfully disagree with Flexsteel's statement based, in part, on the evidence set forth above. Nevertheless, just as in *GEICO*, plaintiffs are entitled under Rule 56 to pursue discovery in order to reasonably respond.

C. Trial Rule 56 specifically allows the Court to alter summary judgment time frames.

Indiana Trial Rule 56 (I) states that the trial court "for cause found, may alter any time limit set forth" in Rule 56. The courts have readily upheld a trial court's decision to alter the summary judgment time limits in the interest of justice or efficiency. See, e.g., *Farm Credit Services of Mid-America, FLCA v. Tucker*, 792 N.E.2d 565, 568-70 (Ind. Ct. App. 2003) (no abuse of discretion when trial court allowed nonmovant to file belated supplemental response to summary judgment motion); *Harco, Inc. of Indpls. v. Plainfield Interstate Family Dining Associates*, 758 N.E.2d 931, 938 n.4 (Ind. Ct. App. 2001) (no abuse of discretion when trial court granted a sixty-day enlargement of time to conduct discovery in order to respond to motion for summary judgment); *Turner v. Bd. of Aviation Comm'rs*, 743 N.E.2d 1153, 1159 (Ind. Ct. App. 2001) (no abuse of discretion in allowing belated filing opposing summary judgment because moving party suffered no prejudice).

Furthermore, Rule 56(F) enables the Court to order a continuance in responding to a summary judgment motion where the responding party establishes a need for additional discovery in order to respond. Trial Rule 56(F) states:

Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to

justify opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

These two rules are particularly applicable here, where the Plaintiffs' initial set of discovery to Flexsteel has not yet been fully answered, and numerous depositions of parties and non-parties will be required over the course of discovery.

D. Examples of Key Documents Requiring Additional Discovery

The following documents serve as examples that (i) Plaintiffs' claims were reasonably asserted against Flexsteel; and (ii) require follow-up discovery to enable Plaintiffs to obtain admissible evidence to respond to Flexsteel's summary judgment motion.

I. The EPA Investigation Team Email

As discussed above, IDEM and EPA's sampling results have pointed to the site of Flexsteel's former manufacturing operations (ie. the Cooper Drive Property and the Marina Drive Property) as the likely source of the contamination. (See Exhibit E) In an email dated July 31, 2008, Kenneth Theisen, the former EPA project manager for the Lane Street Superfund site, summarized the results of a team meeting that was held that day which discussed the source of the contamination. (Exhibit A) In his email, Mr. Theisen states: "[t]he states' Geologist said that he is certain that the tce contamination is coming from the direction of a company that used to occupy 2503 Marina called Dygert Seating." (Id.) Mr. Theisen continues, "[t]he map that we looked at clearly shows the tce coming from the building on Marina. However, as we discussed there is also tce coming from another building, coincidently also owned by Dygert. This building is located at approximately 23542 Cooper and is currently occupied by a company

called CQC" (Id.) The two properties identified in Mr. Theisen's email as the source of the TCE contamination are the Cooper Drive Property and the Marina Drive Property – the former sites of Flexsteel's manufacturing operations. However, in its Brief, Flexsteel characterized the Plaintiffs' claims as "frivolous" (Brief at 1, 19, 20 and 25) and argued that they "are based on nothing more than contrary allegations pled on 'information and belief.'" (Brief at 24) As the EPA has correctly pointed out in its email, the testing data shows that the source areas of TCE contamination are located on Flexsteel's former Manufacturing Site. Flexsteel's Brief extensively criticizes Plaintiffs' counsel and Plaintiffs' allegations, but Flexsteel has offered no alternative theory as to how the TCE got on its property if it didn't come from Flexsteel's manufacturing operations. The Plaintiffs will need to take additional discovery of Flexsteel, including depositions, in order to flesh out Flexsteel's position concerning the source of the contamination.

ii. The MSDS Sheet for Flexsteel's Foam Adhesive

On June 15, 2011, two days after Flexsteel filed its Motion, the Plaintiffs received approximately 35,000 documents from Flexsteel which Flexsteel's counsel represented is the first round of documents that will be produced on a "rolling" basis. Although the Plaintiffs have not had adequate time to review all of those documents prior to this filing, a quick review has already identified several documents that appear to be inconsistent with Flexsteel's position in its Brief. For instance, Flexsteel produced a material safety data sheet ("MSDS") for its High Temperature Foam Adhesive that contains both TCE and PCE as ingredients.⁶ However, in its Brief, Flexsteel states "[t]he former Dygert

⁶ The MSDS sheet identifies PCE as perchloroethylene and TCE as triclone. The EPA uses chemical abstract numbers (C.A.S.) to definitively identify chemicals, like PCE and TCE, that often go by multiple trade names in different industries. The EPA C.A.S. numbers for PCE and TCE are 127-18-4 and 79-01-6, respectively.

Seating Division of Flexsteel did not use adhesives or other products that contained TCE or TCA in its manufacturing process." (see. e.g., Brief at 1) Whether or not Flexsteel used adhesives or other products that contained TCE is an important issue in this case. The Plaintiffs will require additional discovery in order to reconcile Flexsteel's position in its Brief that it "did not use adhesives or other products that contained TCE" with the documents that it has produced that include an MSDS sheet for an adhesive containing TCE.

III. Flexsteel's Answer to Interrogatory No. 25

As described above, on the same day Flexsteel filed its Motion and Brief, it served Plaintiffs with sworn interrogatory answers that included Flexsteel's response to interrogatory No. 25. In interrogatory No. 25, Plaintiffs asked Flexsteel the following question:

"Interrogatory No. 25. Are YOU aware of any use of trichloroethylene ("TCE"), or any material containing TCE, at the FACILITIES between 1983 to present? If so, describe all such uses."

In its answer, Flexsteel identified two products that contained TCE including:

"(1) an aerosol spray degreaser that reportedly contained some TCE was purchased in 16 oz. aerosol spray cans and used to clean the cutters."⁷

However, in its Brief, Flexsteel stated fourteen (14) times that Flexsteel did not use products containing TCE in its manufacturing process, (Brief at 2, 4, 7-9, 15, 19-25) and argued that "Plaintiffs' claims have no basis in fact, and Plaintiffs know them to have no basis in fact." (Brief at 2) The Plaintiffs believed when they filed their Complaint, as they believe now, that Flexsteel is the source of the TCE contamination in

⁷ Exhibit B - FE 8 at Int. Nos. 25 and 26 in Flexsteel's Designation of Evidence.

their drinking water wells. Now Flexsteel's sworn interrogatory responses admit that Flexsteel used a product containing TCE to clean its cutters. Again, the Plaintiffs will need to take discovery on these issues before fully responding to Flexsteel's Motion.

iv. Handwritten Notes Concerning Buried Barrels of Adhesive

On June 20, 2011, Plaintiffs received documents from Defendants Heritage Financial Group, Inc., ("Heritage") and LDL Realty Company, LLC ("LDL"). In that document production, Heritage and LDL produced a letter from IDEM dated June 18, 2008.⁸ The letter contains groundwater and soil sample results that were taken from the Marina Drive Property where Flexsteel formerly conducted manufacturing operations and identify several industrial chemicals that were present in the samples including TCE, PCE and TCA.⁹ In handwritten notes on the first page of the letter, someone wrote: "Directly north of us had barrels buried there. Put a load dock in & discovered buried barrels of adhesive."¹⁰ The property that is "directly north" of the Marina Drive Property is the Cooper Drive Property where Flexsteel conducted its welding and metal working operations.¹¹ The Plaintiffs do not know at this time who wrote the notes, when they were written, or who provided the information. However, at the top of the letter someone wrote the name "Dick Paulen" and a fax number 296-2535. Richard Paulen is a now-retired attorney at Barnes & Thornburg who represented Dygert Seating on environmental matters in the transaction by which Flexsteel acquired Dygert Seating's Assets. Mr. Paulen also communicated with IDEM concerning the contents of barrels of hazardous waste that Flexsteel and/or David

⁸ Exhibit D – Responses of Defendant, Heritage Financial Group, Inc. and LDL Realty Company, LLC to Plaintiffs' Request for Production at Request Nos. 14 and 18.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Exhibit E – IDEM Plume Map.

Dygart attempted to abandon at the former site of Goshen Cushion in Goshen, Indiana. These issues are directly relevant to the Plaintiffs' claims in this lawsuit, and the Plaintiffs will require discovery on them prior to responding to Flexsteel's Motion.

v. Discovery of other Flexsteel Manufacturing Sites

In Plaintiffs' Requests for Production of Documents, Plaintiffs have asked Flexsteel to produce several categories of documents for Flexsteel's "upholstered furniture" sites other than the Cooper Drive and Marina Drive Properties. Plaintiffs defined "upholstered furniture" to have the meaning intended by Flexsteel when it identified several upholstered furniture sites in the Form 10K that it filed with the Securities and Exchange Commission for the fiscal year ending June 30, 1997. This information is relevant because if Flexsteel was using TCE in its upholstered furniture manufacturing process at one site, then it likely also used TCE in the same or similar processes at other sites. For instance, Plaintiffs have already discovered from publicly available documents that Flexsteel was a large user of TCE at its New Paris, Indiana upholstered furniture site.¹² In a document that Flexsteel prepared for use with its Elkhart employees, Flexsteel explained "products similar to or the same as those currently produced in Elkhart have been or are currently produced in New Paris so the transfer of the production should be easier."¹³ The fact that Flexsteel was using TCE in its manufacturing operations in New Paris to make products that were "similar to or the same" as the products made in Elkhart, is probative on the issue of whether Flexsteel was using TCE at its Elkhart site. However, Flexsteel has declared that discovery of its

¹² Exhibit F – Elkhart County Ground Water Protection Program Inspection Form.

¹³ Exhibit G – Question and Answers on Flexsteel Elkhart Closing.

other upholstered manufacturing sites is irrelevant, and has refused to produce responsive documents.


In its Brief, Flexsteel argues that "Plaintiffs had no good faith basis for filing their Amended Complaint in which each and every substantive allegation is pled "on information and belief."¹⁴ (Brief at 25) Flexsteel criticizes Plaintiffs' allegations of chemical usage as "speculative." At a minimum, Plaintiffs should be permitted to inquire why Flexsteel would use TCE in New Paris, whether or not it used TCE at its other upholstered furniture manufacturing sites, and why Flexsteel would use TCE in New Paris but not in Elkhart when Flexsteel's own documents indicate that the two facilities made the same or similar products. Plaintiffs should be permitted to conduct this discovery before being required to respond to Flexsteel's Motion.

D. Conclusion

Flexsteel's Brief is replete with personal attacks on Plaintiffs' counsel. However, in spite of its tone, the substance of Flexsteel's argument is inconsistent with its own documents and sworn interrogatory answers. Flexsteel's own designated materials establish that Flexsteel used products containing TCE and PCE at its Elkhart facility and create a genuine issue of material fact sufficient to allow the Court to deny Flexsteel's Motion without a response from the Plaintiffs. In the alternative, under the authority cited herein, the Plaintiffs request that the Court permit the Plaintiffs at least twelve months to conduct discovery and order a continuance for Plaintiffs' responses to Flexsteel's Motions until sixty (60) days following the conclusion of that discovery.

¹⁴ Flexsteel's statement that "each and every substantive allegation is pled 'on information and belief'" is not correct. Plaintiffs' Amended Complaint contains 283 substantive allegations, and only 37 of those allegations were pled "on information and belief." To date, Plaintiffs have not been made aware of any facts that would make those allegations "speculative" or incorrect.

Respectfully submitted,



John D. Ulmer

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of June, 2011 a copy of the foregoing was mailed, by first-class U.S. Mail, postage prepaid and properly addressed to the following:

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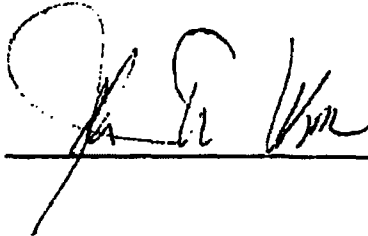
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Kenneth
Thelen/R5/USEPA/US
07/31/2008 11:33 AM

To James Morris/R5/USEPA/US@EPA, Carol
Ropak/R5/USEPA/US@EPA, JOSEPH
KAWECKI/R5/USEPA/US@EPA

cc

bcc

Subject lane street

thanks for meeting today and getting this started.....Joey pay attention.....!

I'll just re-hash what I talked about this morning.

We (remedial and removal management) determined yesterday that the state's intent to score this site will not be affected by our going ahead and getting the residents on Lane street city water. So the first step is to "notice" those responsible.

The states' Geologist said that he is certain that the tce contamination is coming from the direction of a company that used to occupy 2503 Marina called Dygert Seating. As the name implies, they manufactured seating and used different adhesives and some 1-1-1 tce. A gentleman named Brian Smith 574 522-8000 now owns the building and it is called the Hadley building. He is aware of the problem as the state contacted him and told him. He has requested copies of the states' work and maps. He supposedly did a Phase 1 real estate assessment and whether that makes him an "innocent landowner" or not, I'll let you all decide.

The map that we looked at clearly shows the tce coming from the building on Marina. However, as we discussed there is also tce coming from another building, coincidently also owned by Dygert. This building is located at 23542 Cooper and is currently occupied by a company called CQC.

The Dygert building on Cooper made the seat frames from tubular steel and then the Dygert Bldg on Marina took those frames and made the seats (adhesives and cloth etc) .

Two suppliers that supplied chemicals to Dygert are still in business today. They are Accessa Paints and Solvents and Maurer Industrial Supply.

Elkhart County Health Dept did an inspection at Dygert on 10-8-01 and they were operating, but on 10-4-07 they were out of business. Dygert Seating started in 1983 and it looks like they were the original occupant on the building.

I do not know that status of the Dygerts, but I believe the state told me that they (Dygerts were still around).

The Elkhart County Health Dept has a file on Dygert and you can contact John Hulevich at 574 875-3391 for this info. Also, Mark Jaworski of IDEM has some info which I might have forgotten and he can be reached at 317 233-2407.

Guys is it reasonable to assume that the notice letter(s) should be ready to go out in 2 to 3 weeks? My goal is to have city water available to Lane street by the end of November.....

Go Team!

FE 8

Exhibit B

STATE OF INDIANA	}	SS:	IN THE ELKHART SUPERIOR COURT 2
COUNTY OF ELKHART			CAUSE NO 20D02-1106-PL-37
LEO VANNORMAN, et al.,)		
)		
Plaintiffs,)		
)		
vs.)		
)		
FLEXSTEEL INDUSTRIES, INC., LDL REALTY)		
COMPANY, LLC., DAVID DYGERT AND)		
PHYLLIS B. DYGERT,)		
)		
Defendants.)		

**RESPONSES OF DEFENDANT, FLEXSTEEL INDUSTRIES, INC.
TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Defendant Flexsteel Industries, Inc. ("Flexsteel"), through counsel, and pursuant to Indiana Trial Rule 33, responds to Plaintiffs' *First Set of Interrogatories* as follows:

GENERAL OBJECTIONS

1. Flexsteel objects to the instructions provided along with Plaintiffs' Interrogatories. Flexsteel is not bound by these instructions, but by the Indiana Rules of Trial Procedure and Indiana law construing those rules. The instructions have been disregarded in providing these answers, to the extent they require anything more than what is required by Indiana law.
2. Flexsteel objects to the lengthy and overly broad definitions of various words and phrases included with the Interrogatories, including "Hazardous Materials," "Raw Material," "Manufacturing Process," "Release," "Supplier" and "Identify," and will not be bound by them especially to the extent beyond or inconsistent with applicable legal descriptions. Flexsteel has endeavored to answer all Interrogatories assuming normal English definitions for the words used in the Interrogatories and in its Responses. To the extent practical,

Interrogatory, which seeks information related to a variety of manufacturing sites unrelated to the former Dygert Seating Division of Flexsteel, over more than 28 years. Flexsteel further objects to this Interrogatory as overbroad and vague, particularly given the overbroad definition of "raw materials," which appears to encompass every product or substance purchased by Flexsteel, regardless of the purpose of its purchase (housekeeping, etc) and regardless of whether such product or substance was considered "inventory" by Flexsteel. Flexsteel therefore interprets this interrogatory as seeking information solely on materials considered "inventory" at the Dygert Seating Division of Flexsteel. Subject to these general and specific objections:

Flexsteel believes that the Engineering Department at the former Dygert Seating Division of Flexsteel generated a bill of materials required for each product. The purchasing department would then purchase the materials needed to support production levels of that product. The Dygert Seating Division of Flexsteel did not maintain large quantities of materials used in the manufacturing processes at that Division, except fabric.

Flexsteel asked its former Dygert Seating Division to do semi-annual inventory at June and December. This inventory would have been done with the methodologies and software selected by employees of the Dygert Seating Division, which was an operationally and technologically separate business unit from the other Flexsteel divisions. In mid or late-2000, Flexsteel provided the Dygert Seating Division with an AS400 computer. Based on documents to be produced, it appears that the Dygert Seating Division attempted to take an inventory of at least some of the materials used in its manufacturing processes, such as fabric, using this AS400 system.

Interrogatory No. 10. Identify all HAZARDOUS MATERIAL RELEASES at any of YOUR UPHOLSTERED FURNITURE manufacturing sites, including the FACILITIES, since 1983, and the quantity of each such HAZARDOUS MATERIAL RELEASE.

RESPONSE:

Pursuant to Flexsteel's General Objection No. 3, Flexsteel limits its response to this Interrogatory to the former manufacturing site known as the Dygert Seating Division of Flexsteel. Flexsteel also objects to the overbroad and irrelevant time period identified in this Interrogatory, which seeks information related to a variety of manufacturing sites unrelated to the former Dygert Seating Division of Flexsteel, over more than 28 years. Flexsteel further objects to the defined term "release" as vague and overbroad. Subject to these objections, Flexsteel states:

Based on current information and knowledge, and assuming Plaintiffs do not mean to include the permitted or lawful use of Hazardous Materials in the ordinary course of business in their definition of "Release," Flexsteel is unaware of any Releases of Hazardous Materials at the

former Dygert Seating Division of Flexsteel. *See also*, Flexsteel's Response to Interrogatory 12, below. Discovery is ongoing.

Interrogatory No. 11. List and explain all actions taken by FLEXSTEEL to determine the environmental condition of the FACILITIES at any time prior to acquiring ownership of the FACILITIES and/or prior to operating the FACILITIES.

RESPONSE:

Flexsteel engaged Weaver Boos Consultants, Inc. to conduct a Phase I Environmental Site Assessment ("ESA"). As part of this Phase I ESA, Weaver Boos also reviewed records obtained by FOIA requests from various state and local agencies and obtained relevant environmental reports on the subject property, which are appended to the Phase I ESA. This Phase I ESA, dated February 6, 1997, stated that there was "no evidence of recognized environmental conditions in connection with the subject property."

Interrogatory No. 12. List and explain all actions taken by FLEXSTEEL to determine the environmental condition of the FACILITIES at any time after acquiring ownership of the FACILITIES and/or after operating the FACILITIES.

RESPONSE:

Flexsteel objects to the phrase "determine the environmental condition" as vague, and interprets this Interrogatory to request communications with the Elkhart County Health Department ("ECHD") or other state and federal agencies, the use of environmental engineering consulting firms, and environmental sampling and response activities. Subject to this interpretation, the Dygert Seating Division of Flexsteel conducted at least the following activities:

- (1) Participation in the Elkhart County Ground Water Protection Ordinance Inspections.
- (2) Sampling of the septic system at least once between 1997 and 2001.
- (3) Regular work with Industrial Safety & Environmental Services ("ISES") to evaluate chemical usage and submit annual reports to the appropriate state and federal agencies.
- (4) Jerry Alexander contacted the ECHD in approximately October 2001 to obtain instructions on how to clean up a small spill of hydraulic oil from a 55 gallon drum, called "HD 68 Way Oil," on the Cooper Drive manufacturing site. ECHD instructed him to "Remove soil at least 6" below site/or smell of oil. Dispose of properly." Mr. Alexander reportedly performed these tasks as instructed

site disposal. Because the facility only had a few 1-quart glue guns that were occasionally purged, generation of this waste adhesive would have been well below the monthly 220 pound threshold for RCRA Conditionally Exempt Small Quantity Generators.

Interrogatory No. 24. IDENTIFY all COMMUNICATIONS between YOU and the Elkhart County Health Department, IDEM or the USEPA, RELATING TO YOUR UPHOLSTERED FURNITURE manufacturing sites in the continental United States between 1983 and present, including the FACILITIES.

RESPONSE.

Pursuant to Flexsteel's General Objection No. 3, Flexsteel limits its Response to this Interrogatory to the former manufacturing site known as the Dygert Seating Division of Flexsteel. Flexsteel further objects to the overbroad and irrelevant time period identified in this Interrogatory, which seeks information related to a variety of manufacturing sites unrelated to the former Dygert Seating Division of Flexsteel, over more than 28 years. Subject to these general and specific objections, Flexsteel states:

According to available ECHD records, the Dygert Seating manufacturing site was inspected by the ECHD in 1999 and 2001. The Dygert Seating Division also provided the ECHD with septic sample results in 1999, in which no chlorinated volatile organic compounds were detected. On approximately October 8, 2001, Jerry Alexander also initiated contact to the ECHD concerning the small surface spill of hydraulic oil at the Cooper Drive manufacturing site.

The Dygert Seating Division submitted annual "Form R" Reports, identifying the use of certain metals, and annual "Tier II" Inventory Reports which identified the use of rolled electrical welded tubing at the Cooper Drive manufacturing site.

Documents identifying these communications will be produced in response to Plaintiffs' Requests for Production. Discovery is ongoing.

Interrogatory No. 25. Are YOU aware of any use of trichloroethylene ("TCE"), or any material containing TCE, at the FACILITIES between 1983 to present? if so, describe all such uses.

RESPONSE:

Flexsteel is not aware of any bulk purchases of TCE or any product containing TCE at any point in time for use at either the Marina Drive or Cooper Drive manufacturing sites.

Flexsteel knows of only two products used at the Cooper Drive and/or Marina Drive manufacturing sites, at any time, that reportedly contained any amount of TCE. In both instances, the products were available from the hardware store in containers sized for individual/household consumer use. These products were:

(1) an aerosol spray degreaser that reportedly contained some TCE was purchased in 16 oz. aerosol spray cans and used to clean the cutters.

(2) A TCE-based paint thinner/stripper that Jerry Alexander reportedly purchased in approximately 1996 from the hardware store in an individual/household consumer sized container, in conjunction with painting doors at the Marina Drive manufacturing site, and was allowed to evaporate thereafter; this occurred before Flexsteel purchased limited assets of the bankrupt entity, Dygert Seating, Inc.

Interrogatory No. 26. Are YOU aware of any use of tetrachloroethylene ("PCE"), or any material containing PCE, at the FACILITIES between 1983 to present? If so, describe all such uses.

RESPONSE:

Flexsteel is not aware of any bulk purchases of PERC or any product containing PERC, at any point in time, for use at either the Marina Drive or Cooper Drive manufacturing sites.

Flexsteel knows of only one product reportedly used at the Cooper Drive and/or Marina Drive manufacturing sites, at any time, that reportedly contained any amount of PERC. The product was called "604 Hi-Temp Aerosol Adhesive," and was an aerosol spray adhesive that contained less than 10% PERC by weight. This aerosol adhesive was reportedly purchased for limited use by the research and design employees for prototyping the build of a seat, and was not used in manufacturing processes.

Interrogatory No. 27. Are YOU aware of any use of 1-1-1-trichloroethane ("TCA"), or any material containing TCA, at the FACILITIES between 1983 to present? If so, describe all such uses.

RESPONSE:

Flexsteel is not aware of any uses of TCA or material containing TCA by the Dygert Seating Division of Flexsteel; however, at either the Marina Drive or Cooper Drive manufacturing sites, based on ECHD records, the bankrupt entity Dygert Seating, Inc. used an adhesive called "Audal," which contained some TCA, prior to 1994.

Interrogatory No. 28. Identify each and every insurance carrier for the FACILITIES or activities carried out at the FACILITIES since 1983. For each carrier provide the following:

- a. The policy number;
- b. The dates for each policy;
- c. The type of coverage supplied by the policy; and
- d. Whether or not you have made a claim against the policy for losses occurring at the FACILITIES as a result of RELEASES at the FACILITIES

RESPONSE:

Flexsteel objects to this Interrogatory as overbroad, in that it seeks insurance policy information for 14 years before Flexsteel purchased limited assets of the bankrupt entity, Dygert Seating, Inc. Flexsteel limits its Response to the time period of 1997 to the present. Subject to these objections and understanding, Flexsteel states:

Copies of Flexsteel's available insurance policies from 1997 to the present will be produced in response to Plaintiffs' Requests for Production. Before this lawsuit was filed, Flexsteel had not made any claims against these policies for losses occurring at the Dygert Seating Division manufacturing site.

All of Flexsteel's liability carriers during the years 1997 – 2010 have been supplied with a copy of the Plaintiffs' Complaint in the above captioned case, and Flexsteel has asked them to provide its defense.

Interrogatory No. 29. Identify the legal relationship between FLEXSTEEL and YOUR Dygert Seating Division from January 30, 1997 to present.

RESPONSE:

The Dygert Seating Division did not exist prior to March 1997. Dygert Seating was a Division of Flexsteel Industries, Inc. from approximately March 18, 1997 to January 2, 2002. The Dygert Seating Division of Flexsteel ceased to exist after approximately January 2, 2002.

Verification

I, Carl Breen, Corporate Controller for Flexsteel Industries, Inc., hereby certify that I am authorized to sign this Verification on behalf of Flexsteel Industries, Inc.; that while I do not have personal knowledge of all of the facts recited in the Answers of Defendant, Flexsteel Industries, Inc. to Plaintiffs' First Set of Interrogatories, I have been informed that the responses were prepared with the assistance and advice of counsel and that they are based on information collected by others at or on behalf of Flexsteel Industries, Inc. and that said responses are true to the best of my knowledge, or information and belief.

6/02/11
Date

Carl Breen
Carl Breen, Corporate Controller
On behalf of Flexsteel Industries, Inc.

As to Objections,

Kelly J. Hartzler
Robert G. Devetski (#13957-71)
Kelly J. Hartzler (#24929-20)
BARNES & THORNBURG LLP
100 North Michigan, 6th Floor
South Bend, IN 46601
Telephone (574) 233-1171
Fax (574) 237-1125

Attorneys for Flexsteel Industries, Inc.

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document has been served upon the following, by depositing the same in the United States mail, postage prepaid, this 13th day of June, 2011.

John D. Ulmer
YODER, AINLAY, ULMER, &
BUCKINGHAM, LLP
130 N. Main Street
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Attorney for Plaintiffs

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Rodney L. Michael, Jr.
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Michael Schmidt
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4101 Edison Lakes Parkway, Suite 100
Mishawaka, IN 46545
*Attorneys for LDL Realty, LLC & Heritage
Financial Group, Inc.*



Kelly I. Hartzler

BENDER'S WHOLESALE DIST., INC.
2911 MOOSE TRAIL - P.O. BOX 1407
ELKHART, INDIANA 46515

PAGE 1

M A T E R I A L S A F E T Y D A T A S H E E T

PHONE#: (574) 264-4409 24-HOUR D.O.T. PHONE#: (800) 424-8300
TRADE NAME: BENDER'S 804 HIGH TEMPERATURE FLEX. FOAM ADHESIVE, AEROSOL
BENDER I.D. NUMBERS: HPO804

DOCUMENT NUMBER: A000804A

DATE OF ISSUE: 03/25/11

1. HAZARDOUS INGREDIENTS	C.A.S. NO.	PERCENT	EXPOSURE LIMITS	CODES
Dichloromethane	(1) 75-08-2	< 45.0	25.000ppm 50.000ppm	2 * 1
Propane	74-98-6	< 25.0	1,000.000ppm 2,500.000ppm	2 1
Isobutane	75-28-5	< 20.00	N N	2 1
Perchloroethylene	(1) 127-18-4	< 10.00 WA = ACC = 200 ppm ACM = 300 ppm MAX. DUR. = 5m max peak any 3h	25.000ppm	2 * 2 2 2
Triclene	78-01-8	< 10.00 WA = ACC = 200 ppm ACM = 300 ppm MAX. DUR. = 8m max peak any 2h	50.000ppm	2 * 2 2 2

(1) This chemical is subject to the reporting requirements of Section 313 of SARA Title III.

2. PHYSICAL DATA

BOILING POINT: NA VISCOSITY: 175 - 225 cps
VAPOR PRESSURE: Aerosol Cans 40 p.s.i. @ 70 F. PH: ND
VAPOR DENSITY (AIR=1): 4.5 EVAPORATION RATE: NA
APPEARANCE AND ODOR: Amber color, solvent odor PERCENT VOLATILE: 88.0
SOLUBILITY IN WATER: Very Slight SPECIFIC GRAVITY: 1.25
V.O.C.: 4 LBS./GAL.
HMIS CODES: Health: 2 Flammability: 4 Equipment: E Reactivity: 0

3. FIRE AND EXPLOSION HAZARD DATA

FLASH POINT: None

FLAMMABLE LIMITS: LEL: 1.50 UEL: 15.00

D.O.T. CATEGORY: -AEROSOL Consumer Commodity ORM-D
Adhesives flash point lower than 100 F., aerosolized
X

EXTINGUISHING MEDIA:

Use carbon dioxide, dry chemical or foam.

FLEX01_00022349

Exhibit C

MSDS: A000604A

PAGE 2

3. FIRE AND EXPLOSION HAZARD DATA

CONTINUED

SPECIAL FIRE FIGHTING PROCEDURES:

Fire fighters should be equipped with self-contained breathing apparatus when fighting fires involving this material. Water may be used to cool containers to prevent bursting. If water is used, fog nozzles are preferable.

UNUSUAL FIRE AND EXPLOSION HAZARDS:

See section four, Conditions To Avoid and Hazardous Decomposition Products. Exposure to heat may cause bursting of aerosol can. Do not store above 120 degrees F. Overheated aerosol containers adjacent to fire could explode due to pressure buildup.

4. REACTIVITY DATA

STABILITY:

Stable.

INCOMPATIBILITY (Materials to avoid):

Reacts with water, alcohols and amines (not a hazard).

HAZARDOUS POLYMERIZATION:

May not occur.

HAZARDOUS DECOMPOSITION PRODUCTS:

May produce hazardous fumes when heated to decomposition. Fumes may contain carbon dioxide, carbon monoxide, hydrogen chloride and possible trace amounts of chlorine and phosgene.

5. ENVIRONMENTAL INFORMATION

SPILL RESPONSE:

Remove all sources of ignition immediately. Observe precautions in all sections. Collect spilled material with absorbent material. Clean up residue and place in metal container (D.O.T. approved if it is to be shipped).

RECOMMENDED DISPOSAL:**ENVIRONMENTAL DATA:**

ND

6. SUGGESTED FIRST AID

EYE CONTACT:

Flush eyes with plenty of water for at least 15 minutes and call a physician.

SKIN CONTACT:

Wash thoroughly with soap and water.

FLEX01_00022350

MSDS: A000604A

PAGE : 3

6. SUGGESTED FIRST AID

CONTINUED

INHALATION:

Move affected person to fresh air at once. Restore or support breathing as necessary. If breathing difficulties persist, call a physician.

IF SWALLOWED:

Ingestion of aerosol can is unlikely. If ingestion of contents should occur, DO NOT induce vomiting. Call a physician and/or transport to emergency facility immediately. If spontaneous vomiting should occur, lower victim's head between their knees to prevent aspiration into the lungs.

7. PRECAUTIONARY INFORMATION

Use only in areas adequately ventilated with enough air movement to remove vapors and prevent vapor buildup. Avoid prolonged breathing of vapor. Avoid breathing overspray (airborne adhesive particles) during the spray application. Avoid contact with eyes and skin. Avoid vapor contact with open flames, welding arcs or other high temperature sources which can cause vapor decomposition. Do not store above 120 degrees F.

NOTE: Vapors from this product can cause corrosive effects on ducts in work areas.

PROTECTIVE EQUIPMENT: Wear safety goggles if spray mist might get into eyes. Impervious gloves (chemical resistant neoprene) are suggested to prevent skin contact. Use an operating spray booth if at all possible. If not, provide other local exhaust ventilation to prevent vapor buildup. If adequate ventilation can not be maintained, a self-contained breathing apparatus best suited to the needs of your application should be used.

8. HEALTH HAZARD DATA

EYE CONTACT:

May cause irritation to eyes.

SKIN CONTACT:

May defat skin causing dryness, cracking and irritation possibly leading to dermatitis.

INHALATION:

Inhalation of solvent vapors at concentrations which exceed the established exposure limits may cause respiratory system irritation and temporary nervous system impairment. Symptoms of overexposure include dizziness, nausea and headache. Gross acute overexposure can result in unconsciousness and even death. Continued or chronic overexposure may cause mild liver and kidney damage and may adversely affect heart rhythm.

IF SWALLOWED:

Swallowing small amounts could cause irritation of the digestive system. Swallowing large amounts may cause nausea, vomiting, burns, lowered blood

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MSDS: A000604A

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8. HEALTH HAZARD DATA

CONTINUED

pressure, heart rhythm disturbances and mild liver and kidney damage.

HEALTH DATA:

Excessive overexposure to Dichloromethane may cause central nervous system, liver or kidney defects. Dichloromethane has been shown to increase the rate of spontaneously occurring malignant tumors in one strain of laboratory mouse and benign tumors in laboratory rats. Other animal studies, as well as several human epidemiology studies, failed to show tumorigenic response related to dichloromethane. Dichloromethane is not believed to pose a measurable carcinogenic risk to man when handled as recommended. Birth defects are unlikely. Exposures having no effect on the mother should have no effect on the fetus. Did not cause birth defects in other animals; other effects seen in the fetus only at doses which caused toxic effects in the mother. In animal studies has been shown not to interfere with reproduction. Negative or equivocal results have been obtained using mammalian cells or animals. This is consistent with the lack of interaction with DNA in rats and hamsters. Although results of Ames bacterial tests have generally been positive, overall the data suggest that genotoxic potential does not appear to be a significant factor in the toxicity of dichloromethane. Excessive overexposure may cause carbon monoxide poisoning, thereby impairing the blood's ability to transport oxygen.

Perchloroethylene has been found to be carcinogenic in experimental animals at relatively high dosages, by route(s) of administration, at site(s), of histologic type(s) or by mechanism(s) that are not considered relevant to worker exposure. Available epidemiologic studies do not confirm an increased risk of cancer in exposed humans. Available evidence suggests that the agent is not likely to be carcinogenic in humans except under uncommon or unlikely routes or levels of exposure as determined by the ACGIH.

Trichloroethylene is not suspected to be a human carcinogen on the basis of properly conducted epidemiological studies in humans by the ACGIH. These studies have sufficiently long follow-up, reliable exposure histories, sufficiently high dosages, and adequate statistical power to conclude that the exposure to Trichloroethylene does not convey a significant risk of cancer to humans. Evidence suggesting a lack of carcinogenicity in experimental animals will be considered if it is supported by other relevant data.

Trichloroethylene had been classified to be an experimental carcinogen and teratogen. It is considered to be mildly toxic to humans by ingestion and inhalation. Experimental reproductive effects.

ADDITIONAL HEALTH DATA:

ABBREVIATIONS:

- 1 - ACGIH Threshold Limit Values
- 2 - Federal OSHA Permissible Exposure Limit
- 3 - Chemical Manufacturer Recommended Guidelines
- N - None Established
- ACC - Acceptable Ceiling Concentration
- ACM - Maximum Acceptable Ceiling Concentration
- C - Centigrade
- F - Fahrenheit
- * - See "Health Data"
- # - See "Additional Health Data"
- S - Potential Critical Absorption by cutaneous route
- Q - Potential Critical Entrance by Respiration

- H - Hours
- MAX. DUR. - Maximum Duration
- Min. - Minutes
- mg/m³ - Milligrams per square meter
- NA - Not Applicable
- ND - Not Determined
- ppm - Parts Per Million
- P.S.I. - Pounds per Square Inch
- WA - Weighted Average per 8 hour shift
- V.O.C. - Volatile Organic Compound
- R - Values for Inhalation only
- RCRA - Resource Conservation & Recovery Act

FLEX01_00022352

FROM : BENDER GROUP

FAX NO. : 5742644409

Jul. 12 2011 08:19AM P 5

The information on this data sheet represents our current data and best opinion as to the proper use in handling of this product under normal conditions. Any use of the product which is not in conformance with this data sheet or which involves the use of the product in combination with any other product or any other process is the responsibility of the user.

FLEX01_00022353

Requests For Production Nos. 14 and 18

Exhibit D

296-2535 Fax



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

Mitchell E. Daniels, Jr.
Governor

Thomas W. Easterly
Commissioner

100 North Senate Avenue
Indianapolis, Indiana 46204
(317) 232-8603
Toll Free (800) 451-6027
www.idem.in.gov

Re Mark Jaworski

shall know by July 15, 2008

June 18, 2008

*on 7/2
for mark
will send
hard copy with
re mark*

4/23

Hadley
2503 Marina Drive
Elkhart, Indiana 46514

Re: Well Water, the contaminant(s)
and/or soil sample levels

Dear Sir:

Staff of the Indiana Department of Environmental Management (IDEM) have received and reviewed the results of the ground water and soil samples that were obtained from your property during the week of April 14, 2008. The table below shows that sample identification, the concentrations of contaminants that were detected in the sample, the type of sample collected, and how the sample was obtained. When reviewing your water analysis, please remember that by retrieving one sample at one point in time, it is not possible to completely characterize a water supply.

Sample Identification	Contaminant	Sample Type	Collected by
E2Q81	.73 µg/l 1,1-dichloroethane 18 µg/l trichloroethene	ground water	Geoprobe
E2Q82	2.3 µg/l 1,1,1-trichloroethane .43 µg/l cyclohexane 47 µg/l trichloroethene .54 µg/l methylcyclohexane .81 µg/l toluene 1.5 µg/l tetrachloroethene .31 µg/l ethylbenzene .39 µg/l m,p-xylene .36 µg/l benzene	ground water	Geoprobe
E2Q80	Non Detect		
E2PP9	.25 µg/l 1,1,1-trichloroethane .47 µg/l benzene .38 µg/l trichloroethene .93 µg/l toluene .39 µg/l m,p-xylene	ground water	Geoprobe

*Mark e-mail
MJaworski@IDEM-Ind.Gov*

*Effluent under
- Riverside
- Voprey
- Marine Avenue*

*This is
Highland
found in
shallow
aquifer*

*Drinks
North of us
had barrels
buried there.
Put a lock
down +
discouraging
barrels
collective.*

*Sample location map
GIS person
done by [unclear]
6/23/08*

Page 2

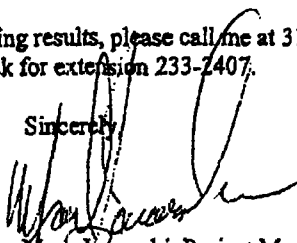
E2PQ1	1.6 µg/l 1,1,1-Trichloroethane 1.6 µg/l trichloroethene .50 µg/l Toluene .13 µg/l ethylbenzene .19 µg/l m,p-Xylene	ground water	Geoprobe
E2Q63	Non Detect	ground water	Geoprobe
E2Q64	1.2 µg/l 1,1-trichloroethane 46 µg/l trichloroethene .23 µg/l toluene	ground water	Geoprobe
E2Q65	1.7 µg/l 1,1-trichloroethane 60 µg/l trichloroethene .17 µg/l toluene	ground water	Geoprobe
E2Q66	1.3 µg/l 1,1-dichloroethane 53 µg/l trichloroethene .49 µg/l methocyclohexane .71 µg/l toluene .15 µg/l ethylbenzene .23 µg/l m, p-xylene	ground water	Geoprobe
E2Q01	.84 µg/l toluene .34 µg/l 1,1-dichloroethane .28 µg/l m,p-xylene .36 µg/l cyclohexane 2.4 µg/l 1,1,1-trichloroethane .52 µg/l benzene 76 µg/l trichloroethene	ground water	Geoprobe
E2Q95	.41 µg/l 1,1-dichloroethane 3.0 µg/l 1,1,1-trichloroethane .61 µg/l benzene 98 µg/l trichloroethene .65 µg/l methylcyclohexane 1.0 µg/l toluene .22 µg/l ethylbenzene .29 µg/l m,p- xylene .53 µg/l cyclohexane	ground water	Geoprobe
E2PP2	.92 µg/l 1,1-dichloroethane 14 µg/l 1,1,1-trichloroethane 300 µg/l trichloroethene .79 µg/l methylcyclohexane .75 µg/l toluene	ground water	Geoprobe
E2PP8	.087 µg/l trans-1,2dichloroethene 3.7 µg/l 1,1,-dichloroethane .32 µg/l cis-1,2-dichloroethene. .63 µg/l 1,1,1-trichloroethane 190 µg/l trichloroethene .38 µg/l toluene .15 µg/l cyclohexane	ground water	Geoprobe

Page 3

E2Q42	1.8 µg/l 1,1,1-trichloroethane .73 µg/l benzene 62 µg/l trichloroethene 1.3 µg/l toluene .30 µg/l ethylbenzene .46 µg/l m,p-xylene .48 µg/l cyclohexane	ground water	Geoprobe
E2Q46	1.8 µg/l 1,1,1-trichloroethane 43 µg/l trichloroethene	ground water	Geoprobe
E2Q41	4.5 µg/l 1,1,1-trichloroethane 240 µg/l trichloroethene .44 µg/l toluene	ground water	Geoprobe
E2Q40	.56 µg/l trans-1,2-dichloroethene .42 µg/l cis-1,2-dichloroethene 75 µg/l trichloroethene	ground water	Geoprobe
E2Q83	Non Detect	ground water	Geoprobe
E2Q84	.16 µg/l 1,1,1-trichloroethane .19 µg/l toluene	ground water	Geoprobe
E2Q85	.80 µg/l toluene .20 µg/l ethylbenzene .15 µg/l o-xylene .29 µg/l m, p-xylene .43 µg/l benzene	ground water	Geoprobe
E2Q47	Non Detect	soil	Geoprobe
E2Q48	Non Detect	soil	Geoprobe
E2Q49	Non Detect	soil	Geoprobe
E2Q50	Non Detect	soil	Geoprobe
E2Q51	Non Detect	soil	Geoprobe
E2Q52	Non Detect	soil	Geoprobe
E2Q53	Non Detect	soil	Geoprobe
E2Q99	Non Detect	soil	Geoprobe

If you have any questions regarding the sampling results, please call me at 317-233-2407 or at IDEM's toll free number 800-451-6027 and ask for extension 233-2407.

Sincerely,



Mark Jaworski, Project Manager
Site Investigation Section
Office of Land Quality

MJ/sb

- Lane St. water sampling - resident had her water sampled.

- August 20, 2007

- Lane St. ^{resident} on filters now.

- Began sampling ^{on} April 14th

- possible recontamination of ground water

- Lane St. filters

- Degreasers, Solvents/paint Thinners, Gasoline containers

-

**Lane Street Ground Water Plume Boundary Map
Defined by Chlorinated VOC's from Key Findings List &
Preliminary Assessment Ground Water Sampling Results
Elkhart, Elkhart County, IN
EPA ID: INN000510229**



0 250 500 750
Feet
0 75 150 225
Meters



IDEM
INDIANA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Prepared for: Mr. Bill Cline, Chief of Land Quality, Elkhart Sewer District, Engineering & GIS Section, September 11, 2008

Summary:

- 2008 Aerial Orthorectification (Orthorectification Project Date: 10/01/2008)
- The ground water plume boundary was defined by drawing a line connecting the elevated ground water sample locations with known detections of chlorinated VOC's based on the Key Findings List and the Preliminary Assessment Ground Water Sampling Results.
- Disclaimer: This map graphically depicts locations and is intended for general reading purposes (VOC's) only.

Legend

- Sample Locations
- Lane Street Ground Water Plume Boundary

10-25-95

Exhibit F

ELKHART COUNTY
() WATER PROTECTION ORDINANCE
HAZARDOUS/TOXIC SUBSTANCE INVENTORY

PAGE 2 OF 2

COMPANY NAME FLUX STEEL INDUSTRIES, INC.

Date 12-19-95

SUBSTANCE	LOCATION	AMT	CPCTY	CONTAINER	COMPLY
1. <u>PAINT WASTE</u>	<u>METAL SHOP</u>	<u>4</u>	<u>55gal</u>	<u>drum</u>	<u>Y</u>
2. <u>TRI-CHLOR WASTE</u>	<u>"</u>	<u>3</u>	<u>"</u>	<u>"</u>	<u>"</u>
3. <u>WASTE OIL</u>	<u>"</u>	<u>4</u>	<u>55gal</u>	<u>"</u>	<u>"</u>
4. <u>DEGREASER</u>	<u>"</u>	<u>3</u>	<u>"</u>	<u>"</u>	
5. <u>PAINT</u>	<u>"</u>	<u>2</u>	<u>"</u>	<u>"</u>	
6. <u>OIL</u>	<u>"</u>	<u>1</u>	<u>"</u>	<u>"</u>	
7. <u>GLUE</u>	<u>"</u>	<u>4</u>	<u>"</u>	<u>"</u>	
8. <u>TCE</u>	<u>"</u>	<u>1</u>	<u>"</u>	<u>"</u>	
9. <u>WOOD GLUE</u>	<u>"</u>	<u>2</u>	<u>"</u>	<u>"</u>	
10. <u>PAINT +</u>	<u>"</u>	<u>1</u>	<u>"</u>	<u>"</u>	
11. <u>PHOSPHORIC ACID</u>	<u>"</u>	<u>1</u>	<u>275</u>	<u>AST</u>	
12. <u>GLUE</u>	<u>UPHOLSTERY</u>	<u>7</u>	<u>55gal</u>	<u>drum</u>	
13. <u>BOOTH WASH</u>	<u>METAL SHOP</u>	<u>2</u>	<u>"</u>	<u>"</u>	
14. <u>SLUDGE</u>	<u>"</u>	<u>1</u>	<u>"</u>	<u>"</u>	
15. <u>PARTS WASHER</u>	<u>UPHOLSTERY MAIN.</u>	<u>1</u>	<u>"</u>	<u>"</u>	
16. <u>PARTS WASHER</u>	<u>TOOL & DIE</u>	<u>1</u>	<u>"</u>	<u>"</u>	<u>Y</u>
17. _____	_____	_____	_____	_____	_____
18. _____	_____	_____	_____	_____	_____
19. _____	_____	_____	_____	_____	_____
20. _____	_____	_____	_____	_____	_____
21. _____	_____	_____	_____	_____	_____
22. _____	_____	_____	_____	_____	_____
23. _____	_____	_____	_____	_____	_____
24. _____	_____	_____	_____	_____	_____
25. _____	_____	_____	_____	_____	_____
26. _____	_____	_____	_____	_____	_____

QUESTIONS AND ANSWERS ON FLEXSTEEL ELKHART CLOSING

1. Q. Why close the Elkhart plant and not the New Paris plant?

A. The recreational vehicle and conversion industries have contracted significantly beginning in early 2000. It now appears unlikely that these industries will recover sufficiently enough to require the utilization of all of the production capacity available in the two facilities. In addition, the largest decline in demand has been in the van conversion industry, which is the primary product produced in Elkhart.

The Elkhart plant is a smaller plant, produces a shorter product line and does not have the metal parts production capabilities that are available in New Paris. Additionally, products similar to or the same as those currently produced in Elkhart have been or are currently produced in New Paris so the transfer of the production should be easier.
2. Q. Is there any chance that the Elkhart plant will be reopened?

A. Yes, but not as a production facility for Dygert Seating van conversion products. Other products have been considered and may be considered as the economy allows.
3. Q. How many Flexsteel employees work at Elkhart?

A. A total of 84 employees are affected by this announcement. There are 52 active employees and 32 employees the are currently on lay-off status.
4. Q. How long has this plant been owned by Flexsteel?

A. March 18, 1997
5. Q. When will the Elkhart plant be closed?

A. Production will end on December 20, 2001. The administrative wrap up will continue until January 13, 2002.
6. Q. Will Elkhart employees be allowed to transfer?

A. Most Elkhart factory employees will be offered employment at our New Paris plant during the six months following the closing of the Elkhart plant. Exactly when, will be dictated by the recovery of the vehicle seating market and the number of and when New Paris employees that exit.

Some of the Elkhart administrative employees will be offered employment in New Paris.
7. Q. How large are the Elkhart and New Paris plants?

- A. The Elkhart plant is actually two separate building that total 99,500 sq. ft. The New Paris factory s a 158,900 sq. ft. single building operation making it much more efficient.

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STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

IN THE ELKHART SUPERIOR COURT 2
CAUSE No. 20D02-1106-PL-00037

LEO VANNORMAN, et al.,)

Plaintiffs,)

v.)

FLEXSTEEL INDUSTRIES, INC.,)
LDL REALTY COMPANY, LLC,)
HERITAGE FINANCIAL GROUP, INC.,)
DAVID L. DYGERT, and)
PHYLLIS B. DYGERT,)

Defendants.)

FLEXSTEEL INDUSTRIES, INC.,)

Third-Party Plaintiff,)

v.)

TRAVELERS PROPERTY CASUALTY)
COMPANY OF AMERICA, NATIONAL)
UNION FIRE INSURANCE COMPANY)
OF PITTSBURGH, PA, ILLINOIS)
NATIONAL INSURANCE COMPANY,)
and CONTINENTAL CASUALTY)
COMPANY,)

Third-Party Defendants.)

AFFIDAVIT OF THOMAS A. BARNARD

I, Thomas A. Barnard, sworn upon his oath and under the penalties of perjury,
state as follows:

Exhibit H

1. I am one of the attorneys of record representing the Plaintiffs in the above-referenced matter, have personal knowledge of the matters herein, and am otherwise competent to offer this affidavit.

2. I am a partner in the law firm Taft Stettinius & Hollister, LLP, and have been practicing in the area of environmental litigation for over twenty years.

3. I was co-counsel for the plaintiff homeowners in *Shell Oil v. Meyer*, 705 N.E.2d 962 (Ind. 1998), another case involving groundwater contamination, and I had the honor to argue the case before the Indiana Court of Appeals and the Indiana Supreme Court. I have represented clients in numerous additional cases throughout Indiana involving groundwater contamination from industrial activities.

4. Discovery has just begun in the above-referenced case, and Plaintiffs have not received all requested discovery from the Defendants.

5. Other than a deposition concerning electronic discovery and searches for documents by Flexsteel, to be conducted on June 23, 2011, no depositions have been taken or scheduled.

6. Based on my experience in groundwater contamination cases, I reasonably anticipate the need to conduct depositions of current and former employees of Defendants, as well as chemical and equipment suppliers and manufacturers, environmental consultants, environmental regulators, and non-party property operators and owners, all relating to Plaintiffs' claims of trespass, nuisance and violations of the Indiana Environmental Liability Act, Ind. Code § 13-30-9-2.

7. In a similar case involving trichloroethylene ("TCE") groundwater contamination, in which I represented the plaintiff (and counter-defendant) landowner,

the Honorable Larry D. McKinney found liability based upon paper documents (including Material Safety Data Sheets ("MSDS")) and testimony from former employees indicating that the defendant, Red Spot Paint and Varnish Company, had indeed used TCE despite many years of denying such throughout the litigation. *See 1100 West LLC. v. Red Spot Paint and Varnish Company, Inc.*, 2009 WL 1605118, (S.D. Ind. 2009).

8. In the instant case, Plaintiffs share a similar need to obtain paper and electronic documents, as well as deposition testimony, relevant to Flexsteel's use of TCE at its Elkhart facility, as well as use of TCE by Flexsteel other defendants and non-parties at similar locations or in similar industrial activities.

9. Based upon my experience in similar cases, Plaintiffs will reasonably require a period of at least twelve (12) months to conduct such discovery.

10. Without the benefit of the aforementioned discovery, Plaintiffs would be prejudiced in their ability to identify all available admissible evidence that precludes summary judgment in favor of Flexsteel.

FURTHER AFFIANT SAYETH NOT.

I affirm, under the penalties for perjury, that the foregoing representations are true.

Executed on the 22nd of June, 2011.


Thomas A. Barnard